

MARK D. WILKERSON

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BRANTLEY, WILKERSON & BRYAN, P.C.
ATTORNEYS & COUNSELORS

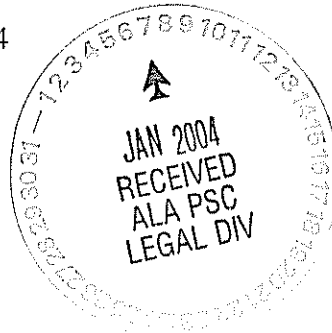
405 SOUTH HULL STREET
MONTGOMERY, ALABAMA 36104
TEL 334 265 1500
mark@brantleywilkinson.com

MAILING ADDRESS
POST OFFICE BOX 830
36101-0830
FAX 334 265 0319

January 6, 2004

VIA HAND DELIVERY

The Honorable Walter Thomas
Alabama Public Service Commission
RSA Union Building
100 North Union Street
Montgomery, AL 36104



Re: Proposed Revisions to Price Regulation and Local Competition Plan,
Docket: 28590

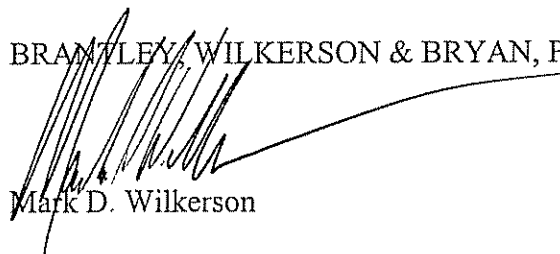
Dear Mr. Thomas:

Enclosed herein for filing with the Alabama Public Service Commission are the original and ten copies of the Initial Comments of the Non-BellSouth ILECS filed on behalf of the Incumbent Telephone Companies listed in Appendix "A" to the Petition.

If you have any questions, please do not hesitate to contact me.

Very Truly Yours,

BRANTLEY, WILKERSON & BRYAN, P.C.


Mark D. Wilkerson

MDW:cld

Enclosure

ALABAMA PUBLIC SERVICE COMMISSION

IN RE:

PETITION OF SOUTH CENTRAL BELL)	
TELEPHONE COMPANY TO)	DOCKET 24499
RESTRUCTURE ITS FORM OF)	
REGULATION)	
)	
ALL TELEPHONE COMPANIES)	
OPERATING IN ALABAMA, GENERIC)	DOCKET 24472
HEARING ON LOCAL COMPETITION)	
)	
STREAMLINED REGULATION OF)	
INTEREXCHANGE CARRIER AND)	DOCKET 24030
RESELLER TELECOMMUNICATIONS)	
SERVICES)	
)	
COMPLAINT FILED BY AT&T)	
COMMUNICATIONS OF THE SOUTH)	DOCKET 24865
CENTRAL STATES, INC. AGAINST)	
SOUTH CENTRAL BELL ON)	
APRIL 25, 1995)	

Initial Comments of Non-BellSouth ILECs

Pursuant to the Commission's July 31, 2003 Order, the Incumbent Telephone Companies listed in Exhibit "A" ("the Independents") hereby file initial comments regarding the proposed adoption of a new Streamlined Regulation Plan for telecommunications providers in the State of Alabama.

Summary of Comments

Technological advances and other industry changes have heightened the need for modifications to the existing streamlined regulation plan adopted in 1995. The plan filed by the Independents on January 31, 2003¹ was a product of compromises reached during a series of informational meetings conducted by the APSC staff extending over two years. Since that time,

the continuing expansion of wireless services and the introduction of internet telephony into the state have underscored the need for even greater pricing flexibility.

ILECs in both rural and urban areas are facing competition from numerous carriers using a variety of wireless and wireline technologies. Although there may be fewer wireline competitors in rural areas, the Independents are, for several reasons, more vulnerable than their larger counterparts to competition from unregulated competitors. ILECs serving rural areas should be given greater freedom to respond to these challenges and should not be burdened by regulatory restrictions that are inapplicable to BellSouth.

Payments for the origination and termination of ILEC to ILEC interexchange traffic continue to represent a significant component of the total revenue streams of ILECs serving rural areas and remain a critical element of this Commission's overall regulatory policy. Any plan adopted by the Commission must address the regulation of all non-local intercarrier charges, including ILEC to ILEC charges.

I. Any Regulation Plan Should Encompass All Regulated Carriers.

A. One Plan for Alabama.

The Commission should adopt a comprehensive plan that applies to all providers of telecommunications services. BellSouth's Metro Pricing Plan would provide it with unfettered retail pricing flexibility in most of its service area, while leaving an Independent serving an adjacent exchange under severe pricing limitations. It makes little sense for a small, non-BellSouth ILEC serving a business customer in Leeds, Alabama, to have less pricing flexibility than a large RBOC serving a business less than two miles away. The plan should also include the Dothan and Auburn-Opelika MSAs as areas eligible for greater pricing flexibility.

¹ Referenced in the Order as the Rural LEC Plan.

Competition exists in the service areas of each ILEC in Alabama. There are numerous CLECs providing service in CenturyTel's incumbent franchise area, as well as in other Independent service areas, such as that of Gulf Telephone Company. In addition, each of the CMRS providers listed in Exhibit 2 to BellSouth's Metro Pricing Flexibility Plan also serve Independent areas, some with the benefit of federal high cost support. Collectively, these wireless carriers offer more than eighty local rate packages, all priced without regard to the regulatory restrictions faced by the Independents. Finally, multiple internet telephony (IP) providers are now offering local telephone service to any customer with broadband access (which is now available by satellite, DSL, or cable modem to every Alabama consumer), a technology that is rapidly rendering obsolete traditional concerns about ILEC "bottleneck" facilities.

While BellSouth certainly faces a greater number of traditional wireline competitors than most of the Independents,² it also benefits from distinct advantages over its smaller counterparts. In addition to having a tremendous advantage in the sheer number of homes that it serves, BellSouth also serves the areas of highest household density and income. These factors combine to give BellSouth far greater revenue opportunities than are shared by the Independents. BellSouth also has the ability to amortize facility investments against a potential market many times the size of the Independents.

The Independents support BellSouth's request for greater retail pricing flexibility. However, there is no justification for the creation of a separate regulatory classification benefiting only the largest telecommunications provider in the state.

² CenturyTel of Alabama, LLC has multiple wireline and wireless facility based competitors in its service area, as well as a number of resellers. It also has interconnection agreements in place with a variety of wireline facility based competitors and numerous other telecommunications providers.

B. ILECs Should Have Greater Pricing Flexibility for Vertical Services.

The APSC Staff Plan differs from the Rural LEC Plan in that it freezes rates for business and residential call waiting, call forwarding, and caller ID for three years and then subjects such rates to the same 5% cap as other residential non-basic services. A pricing freeze on so-called vertical services is a step in the wrong direction and ignores the unfettered pricing flexibility of competitors that are not regulated by this Commission. Recent events justify relaxation of the non-basic caps included in the Rural LEC and APSC Staff Plans and an elimination of the freeze on certain vertical services.

C. All Non-Local Inter-carrier Charges Must Be Addressed in the Plan.

Alabamians currently enjoy the benefits of an intercarrier compensation system that promotes the continued deployment of basic and advanced services in the most rural areas of the State at rates that are still comparable to those in urban areas. If the Commission allows changes in established cost recovery mechanisms prior to the adoption of a state universal service fund or another alternative recovery mechanism, the resulting impact on universal service and basic service rates will be severe. The Independents simply cannot maintain the provisioning of universal service in the absence of adequate cost recovery mechanisms. The implementation of piece-meal changes to intercarrier compensation in the absence of a comprehensive cost recovery plan will inevitably result in the state being divided between “haves” and “have-nots.” The two primary intercarrier cost recovery mechanisms utilized are discussed below.

1. Access Charges. Under all three plans published by the Commission for comment, the combination of the traffic sensitive per minute charges for originating and terminating switched access service is capped at the effective interstate level approved for the ILEC by the Federal Communications Commission (FCC); however, the APSC Staff Plan omits

a critical element found in the Independent and BellSouth proposals. Reductions in interstate switched access rate elements have historically been accompanied by offsetting increases in the federal subscriber line charge (SLC) and/or increases in universal service funding.³ If intrastate access charges are capped at interstate levels, a similar offsetting mechanism must be employed on an intrastate basis in the event of a mandated interstate access charge reduction. The Commission should adopt language found in the Rural ILEC and BellSouth plans providing for an intrastate access reduction only when there is a corresponding revenue recovery through either a SLC or an alternative statewide cost recovery mechanism.

The Independents note that this Commission has urged the FCC to explore alternative revenue recovery mechanisms for carrier common line (CCL) charges. Specifically, the APSC and other commentators have supported the adoption of a capacity charge assessed on carriers that is based upon the number of trunk ports and line port connections purchased from an ILEC. See FCC's *Second Order on Reconsideration and Memorandum Opinion In the Matter of Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, and *Transport Rate Structure*, CC Docket No. 91-213, adopted October 8, 1997. In the same FCC proceeding, the National Exchange Carriers Association (NECA) proposed a method allowing NECA pool members to charge a nationwide average CCL per-line rate and bulk bill any residual amounts due. The Independents believe that these types of billing alternatives could provide a means of addressing some of the intercarrier compensation

³ For price cap carriers, the reduction in interstate access rate levels was established in the CALLS proceeding, which increased the interstate SLC caps and established a \$650 million universal service fund element. See FCC's *Sixth Report and Order in CC Docket Nos. 96-262 and 94-1*, *Report and Order in CC Docket No. 99-249*, and *Eleventh Report and Order in CC Docket No. 96-45*, adopted May 31, 2000. For rate of return carriers, the latest decrease in interstate access charges included an increase in the SLC caps and establishment of the Interstate Common Line Support (ICLS) universal service support fund element. See FCC's *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256*, *Fifteenth Report and Order in CC Docket No. 96-45*, and *Report and Order in CC Docket Nos. 98-77 and 98-166*, adopted October 11, 2001.

issues currently facing the industry on an intrastate basis. The Independents encourage the APSC to hold workshops to discuss the adoption of a capacity charge or similar bulk billing mechanism.

2. BellSouth/ILEC Compensation. There is no reason to exempt BellSouth from the payment of access charges to the Independents for terminating interexchange traffic. Under the Rural LEC plan, existing arrangements between incumbent ILECs for the termination of traffic between their respective certificated service areas would remain effective except to the extent specifically addressed in the plan or otherwise agreed by the parties and approved by the Commission. The APSC Staff Plan contains no such provision, leaving the parties to guess as to whether such a provision is included. Although not clear, BellSouth's plan implies that ILEC to ILEC compensation for traffic between incumbent service areas falls under the local interconnection category, a position that is not consistent with current arrangements and would be vigorously contested by the Independents.⁴

This Commission has previously stated its intent not to allow BellSouth to unilaterally reduce ILEC to ILEC intercarrier payments. On August 23, 2002, the APSC issued an Order requiring BellSouth and the Independents to "transact business ...with regard to the exchange of traffic between their respective territories and the disbursement of compensation therefore in the same manner in which they were handling such matters prior to April 30, 2002".⁵ On September

⁴ The BellSouth Plan divides services into "*Retail Services*" and "*Interconnection Services*." Interconnection Services are divided into three categories, described as follows:

-*Switched Access*- "Allows toll providers to interconnect ...for toll calls"

-*Special Access*- "non-switched services to connect directly with an *LXC terminal* or between two end user premises"

-*Local Access Services*- "Allows CLECs or other providers of local exchange services to complete local calls via BellSouth's network pursuant to Telecom Act..."

⁵ Order Granting Motion for Standstill, *In re Intercarrier Compensation*, Docket No. 28642, at p 16 (APSC Aug 3, 2002)

12, 2003, the Standstill Order was amended only to the limited extent necessary to implement a mediated settlement between BellSouth and the Independents regarding compensation for indirect CMRS traffic and the elimination of single billed private line service. The Commission should explicitly retain jurisdiction over such intercarrier compensation arrangements under the access services category and avoid pressure to address such charges outside of the context of the streamlined regulation plan.

A recent study conducted by the National Exchange Carriers Association (NECA), Trends in Telecommunications Cost Recovery: The Impact on Rural America, documents how rural America is being negatively affected by an FCC policy that is increasingly shifting the burden of telephone network cost recovery from other carriers to end users and government support mechanisms. NECA, *Executive Summary*, (Jan. 6, 2004) available at www.neca.org. The Commission should not adopt a plan that contributes to this problem by unnecessarily reducing intercarrier compensation.

3. Other Carriers. The Commission should aggressively apply any Streamlined Regulation Plan to all providers of local exchange services falling within its jurisdiction, including providers of intrastate phone-to-phone IP telephony service or other Voice over Internet Protocol ("VoIP") services and should affirm that all telecommunications carriers are responsible for the payment of access charges for the origination or termination of non-local traffic from or to the public switched telephone network. Although the Commission has established a separate proceeding to consider the status of IP telephony, it is critical that intercarrier compensation not be viewed in isolation from these issues.

4. Special Construction Charges. Although ILECs will continue to be subject to carrier of last resort obligations, there must be a reasonable limit on the level of construction

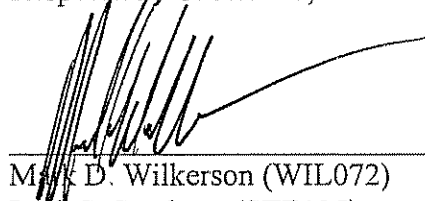
charges they must incur to provide basic local exchange telecommunications services to a primary dwelling. The APSC Staff Plan provides a \$5,000 cap on construction cost obligations for all ILECs having fewer than 50,000 access lines. This cap should be applied to all ILECs.

II. The Plan Should Acknowledge Telecom Act Procedures Applicable to Rural Carriers.

The Rural LEC plan defines “ILECs subject to local competition” as “those incumbent local exchange companies who ... either have in place interconnection agreements with other telecommunications carriers providing competitive local service ... or provide proposed terms and conditions for local interconnection no later than eighteen (18) months from the date of an Order approving this Plan.” The APSC Staff Plan defines such ILECs to include ILECs “who ... submit to the Commission for such review or approval as may be required by the Commission, prices for unbundled network elements (UNEs), a proposed resale discount rate, and an available proposed interconnection agreement no later than eighteen (18) months from the date of this Order.”

There is no need to require the submission of a proposed interconnection agreement in those circumstances where an ILEC already has an existing interconnection agreement with a carrier on file with the Commission. Further, it would constitute an undue economic burden to require very small rural carriers to attempt to file UNE prices in situations where they are not required under the Telecom Act. Any plan approved by this Commission should preserve the Telecom Act exemptions applicable to rural carriers, as well as the procedures prescribed by the Act to remove such exemptions.

Respectfully Submitted,



Mark D. Wilkerson (WIL072)
Leah S. Stephens (STE125)
Keith S. Miller (MIL080)

OF COUNSEL:

Brantley, Wilkerson & Bryan, P.C.
P.O. Box 830
Montgomery, Alabama 36101-0830
Telephone: (334) 265-1500
Facsimile: (334) 265-0319

CERTIFICATE OF SERVICE

I hereby certify that I have serviced a copy of the foregoing upon the following individual(s) in this cause by placing the same in the U.S. Mail, postage prepaid and properly addressed this the 6th day of January, 2004.

Francis B. Semmes, Esq.
BellSouth Telecommunications, Inc.
3196 Highway 280 South
Room 304N
Birmingham, Alabama 35243

Wendell Cauley, Esq.
Bradley Arant
401 Adams Avenue, Suite 780
Montgomery, Alabama 36104



OF COUNSEL

EXHIBIT "A"

ALLTEL Alabama, Inc.
Ardmore Telephone Company, Inc.
Blountsville Telephone Company
Butler Telephone Company, Inc.
Brindlee Mountain Telephone Company
Castleberry Telephone Company, Inc.
CenturyTel of Alabama, LLC
Farmers Telephone Cooperative, Inc.
GTC, Inc. d/b/a GT Com
Frontier Communications of Alabama
Frontier Communications of Lamar County
Frontier Communications of the South, Inc.
Graceba Total Communications, Inc.
Gulf Telephone Company
Hayneville Telephone Company, Inc.
Hopper Telecommunications Co., Inc.
Interstate Telephone Company
Millry Telephone Company, Inc.
Mon-Cre Telephone Cooperative, Inc.
Moundville Telephone Company, Inc.
National Telephone of Alabama, Inc.
New Hope Telephone Cooperative, Inc.
Oakman Telephone Company, Inc.
Otelco Telephone, LLC. (formerly
Oneonta Telephone Company, Inc.).
Peoples Telephone Company, Inc.
Pine Belt Telephone Company, Inc.
Ragland Telephone Company, Inc.
Roanoke Telephone Company, Inc.
Union Springs Telephone Company
Valley Telephone Company